

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

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PLR-123084-09

Date:

June 09, 2009

Legend

Oldco =

Business A =

Business B

State X =

Business A Subs =

Business B Subs =

LLC =

Newco =

Dear _____ :

This letter responds to your letter dated April 29, 2009, in which you requested rulings under section 368(a)(1)(F) of the Internal Revenue Code. The information submitted in that letter and later correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Summary of Facts

Oldco is the common parent of an affiliated group that files a consolidated return on a calendar year basis. Oldco is an accrual method taxpayer.

Oldco conducts Business A and Business B through its wholly-owned subsidiaries, Business A Subs and Business B Subs. The Business A Subs operate Business A, and the Business B Subs operate Business B.

For what Oldco represents are valid business reasons, Oldco proposes the following steps:

- 1) Oldco will form a new, wholly-owned State X subsidiary ("Holdco").
- 2) Holdco will form a new, wholly-owned State X subsidiary ("Sub").
- 3) Oldco will transfer to Holdco all of the stock of Business B Subs.
- 4) Sub will merge with and into Oldco, with Oldco surviving. Pursuant to the merger, the Oldco shareholders will receive common stock of Holdco in exchange for their shares of Oldco common stock.
- 5) Following step 4, but on the same day as step 4, Oldco will convert into a limited liability company under applicable State X law ("LLC"). Pursuant to Treas. Reg. § 301.7701-3(b), LLC's default classification for U.S. federal income tax purposes will be that of an entity disregarded as separate from its sole owner.
- 6) Following step 5, LLC will convert back to a corporation under applicable State X law ("Newco"). This step will occur on either the same day as step 5 or, at the latest, the day after step 5.

- 7) Within approximately thirty (30) days after step 6, Holdco may contribute the stock of certain of the Business B Subs to Newco.
- 8) Following step 7, Holdco may form a new subsidiary holding company ("Controlled").
- 9) Holdco would contribute its equity interests in certain of the Business B subs to Controlled.
- 10) Holdco would distribute the stock of Controlled to the Holdco shareholders on a pro-rata basis.

Steps 1 through 5 will hereinafter be referred to as the Reorganization, step 6 will be referred to as the Incorporation, and step 7 will be referred to as the Drop Down Step. In addition, steps 8 through 10 will be referred to as the Distribution.

Representations

The following representations are made with respect to the proposed transaction:

- a) The shareholders of Oldco will receive solely Holdco stock in the Reorganization.
- b) The fair market value of the Holdco stock received by each Oldco shareholder will be approximately equal to the fair market value of the Oldco stock surrendered in the exchange.
- c) Following the Reorganization, the shareholders of Oldco will own all of the outstanding Holdco stock and will own such stock solely by reason of their ownership of Oldco stock immediately prior to the transaction.
- d) Following the Reorganization, each shareholder of Oldco will hold the same percentage of stock in Holdco as the percentage of stock such shareholder previously held in Oldco.
- e) Immediately after the step 5, Holdco will hold (directly and through LLC) all the assets held by Oldco immediately prior to the Reorganization. The assets used to pay expenses will be less than one percent (1%) of the fair market value of the net assets of Oldco immediately prior to the Reorganization. No assets will be distributed, and there will be no dissenting shareholders.
- f) At the time of the Reorganization, Oldco will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Oldco, except for (1) options to purchase the common shares of Oldco, restricted stock units, or other rights to acquire Oldco common shares that were granted pursuant to Oldco's incentive compensation

plans and Oldco's employee stock purchase plan, all of which were in effect prior to the Reorganization, and (2) two series of notes that have features under which the note holders can convert the notes into cash and shares of common stock. After the Reorganization, any such Oldco incentive plans will be amended so that Holdco becomes the issuer of such shares, and the conversion feature of the notes will, by their terms, be adjusted so that holders receive stock of Holdco rather than of Oldco.

- g) With regard to the assets transferred from Oldco to Holdco in the Reorganization, both (i) the total adjusted basis of the assets, and (ii) the fair market value of the assets will each equal or exceed the sum of the liabilities (as determined under section 357(d)) assumed by Holdco.
- h) At all times prior to acquiring the assets of Oldco in the Reorganization: (i) Holdco will have been engaged in no business activity; (ii) Holdco will have had no Federal income tax attributes (attributes described in section 381(c)); and (iii) Holdco will have held no assets (except for holding a minimal amount of assets if such assets are required for the purpose of paying Holdco's incidental expenses or required in order to maintain Holdco's status as a corporation in accord with State X law).
- i) All liabilities to which the Oldco assets are subject at the time of the Reorganization, and all the liabilities of Oldco that are properly treated as being assumed by Holdco in the Reorganization (as determined under section 357(d)), are liabilities that were incurred by Oldco in the ordinary course of its business and are associated with the assets transferred from Oldco to Holdco.
- j) Oldco, Holdco and each of the Oldco shareholders will pay his, her, or its own expenses incurred in connection with the Reorganization.
- k) Oldco is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A) of the Internal Revenue Code.
- l) No stock or securities will be issued for services rendered to or for the benefit of Newco in connection with the Incorporation and Drop Down. No stock or securities will be issued for indebtedness of Newco that is not evidenced by a security or for interest on indebtedness of Newco which accrued on or after the beginning of the holding period of Holdco for the debt.
- m) The transfers are not the result of the solicitation by a promoter, broker, or investment house.
- n) Holdco will not retain any rights in the property deemed transferred to Newco upon LLC's state law conversion to Newco. In addition, Holdco will not retain any rights in the assets transferred to Newco in the Drop Down.

- o) The adjusted basis and the fair market value of the assets deemed transferred by Holdco to Newco as part of the Incorporation and Drop Down are equal to or exceed the sum of the liabilities to be assumed (as determined under 357(d)) by Newco plus any liabilities to which the transferred assets are subject.
- p) The aggregate fair market value of the assets of LLC immediately following the Incorporation and Drop Down will exceed the aggregate amount of LLC's adjusted basis therein.
- q) There is no indebtedness between Holdco and Newco and there will be no indebtedness created in favor of Holdco as a result of the Incorporation and Drop Down.
- r) The Incorporation and Drop Down will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.
- s) The transfer of assets in the Incorporation by Holdco to Newco will occur on approximately the same date. The transfer of assets in the Drop Down will occur within approximately 30 days of the Incorporation.
- t) There is no plan or intention on the part of Newco to redeem or otherwise reacquire any stock or indebtedness to be issued in the Incorporation and Drop Down.
- u) No additional shares of Newco stock will be issued as part of the Incorporation and Drop Down. Thus, Holdco will be in "control" of Newco within the meaning of section 368(c).
- v) Holdco will be deemed to receive stock approximately equal to the fair market value of the property transferred to Newco.
- w) Following the Incorporation and Drop Down, Newco will remain in existence and retain and use the property transferred to it in a trade or business.
- x) There is no plan or intention by Newco to dispose of the transferred property following the Incorporation and Drop Down.
- y) Each Holdco and Newco will pay its own expenses, if any, incurred in connection with the Incorporation and Drop Down.
- z) Newco will not be an investment company within the meaning of section 351(e)(1) of the Code and section 1.351-1(c)(1)(ii) of the regulations.
- aa) Holdco is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of section 368(a)(3)(A)) and the stock or securities received in the exchange will not be used to satisfy the indebtedness of such debtor.

- bb) Newco will not be a “personal service corporation” within the meaning of section 269A of the Code.

Rulings

We rule as follows:

- 1) Steps 1 through 5 of the proposed transaction will be integrated and treated as the transfer by Oldco of all of its assets, subject to liabilities, to Holdco in exchange for stock of Holdco, followed by the distribution by Oldco of the Holdco stock to its shareholders in liquidation, and will constitute a reorganization within the meaning of section 368(a)(1)(F) of the Internal Revenue Code. Rev. Rul. 67-274, 1967-2 C.B. 141. Holdco and Oldco will each be “a party to the reorganization” within the meaning of section 368(b). The subsequent conversion of LLC to Newco pursuant to step 6, the potential Drop Down of additional assets as described in step 7 and the potential Distribution described in steps 8 through 10 will not preclude the Reorganization from qualifying as a section 368(a)(1)(F) reorganization. Rev. Rul. 96-29, 1996-1 C.B. 50.
- 2) No gain or loss will be recognized by Oldco upon the deemed transfer of all of its assets to Holdco in exchange for Holdco stock and the assumption of liabilities (sections 361(a) and 357(a)).
- 3) No gain or loss will be recognized by Holdco upon the receipt of the Oldco assets (section 1032(a)).
- 4) Holdco’s basis in the assets acquired from Oldco will be the same as Oldco’s basis in such assets immediately before the proposed transaction (section 362(b)).
- 5) Holdco’s holding period for the assets acquired from Oldco will include the period during which such assets were held by Oldco (section 1223(2)).
- 6) No gain or loss will be recognized by the shareholders of Oldco upon the receipt of the stock of Holdco in exchange for the stock of Oldco (section 354(a)(1)).
- 7) The basis of the Holdco stock in the hands of the Oldco shareholders will be equal, in the case of each such shareholder, to the basis of the Oldco stock surrendered by that shareholder in exchange therefore (section 358(a)(1)).
- 8) The holding period for the Holdco stock in the hands of the Oldco shareholders will include the period, in the case of each such shareholder, during which that shareholder held the Oldco stock exchanged therefore, provided that the Oldco stock is held as a capital asset in the hands of that shareholder on the date of the exchange (section 1223(1)).

- 9) As provided by section 381(a), Holdco will succeed to the tax attributes of Oldco enumerated in section 381(c).
- 10) Since the Reorganization is treated as a reorganization within the meaning of section 368(a)(1)(F), the affiliated group of which Oldco was the common parent corporation and the taxable year of such affiliated group will not terminate, and such affiliated group and such taxable year will continue with Holdco, the successor to Oldco, as the common parent of the affiliated group (Treas. Reg. § 1.381-1(a)(2) and 1.1502-75(d)(2)(i)).
- 11) Holdco will continue to use the taxpayer identification number previously assigned to Oldco. Rev. Rul. 73-526, 1973-2 C.B. 404.
- 12) The Incorporation will be treated as the transfer by Holdco of the assets held by LLC to Newco in exchange for Newco stock and the assumption of liabilities. The Drop Down will be treated as the transfer by Holdco of certain assets to Newco in exchange for Newco stock. Holdco will not recognize gain or loss on the transfers of assets in the Incorporation and the Drop Down (sections 351(a) and 357(a)).
- 13) Newco will not recognize gain or loss on the receipt of Holdco's assets in exchange for Newco stock in the transfers described in ruling (12) above (section 1032(a)).
- 14) Newco's basis in the assets deemed received from Holdco will be the same as the basis of those assets in the hands of Holdco immediately before the transfers described in ruling (12) above (section 362(a)).
- 15) The holding period of each asset received by Newco will include the period during which Holdco held the asset prior to the transfers as described in ruling (12) above (section 1223(2)).
- 16) The adjusted basis of the Newco stock received by Holdco in ruling (12) above will be the same as the adjusted basis of the assets transferred in the Incorporation and Drop Down in exchange therefore, reduced by the amount of liabilities assumed by Newco (section 358(a)).
- 17) The holding period of the Newco stock received by Holdco in ruling (12) above will include the holding period of the assets transferred by Holdco to Newco, provided the assets are held by Holdco respectively as capital assets on the date of the exchange (section 1223(1)).
- 18) Newco will not succeed to any of the tax attributes of Holdco by reason of the asset transfer in the Incorporation (Treas. Reg. § 1.381(a)-1(b)(2)(i) and (ii) Example (4)).

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

Procedural Statements

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Lewis K. Brickates
Branch Chief, Branch 4
Associate Chief Counsel (Corporate)

cc: